5-8-2014

State v. Beck Respondent's Brief Dckt. 41241

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO, Plaintiff-Respondent, vs. RICHARD BECK, Defendant-Appellant.	)	No. 41241 Boise Co. Case No. CR-2011-1483

BRIEF OF RESPONDENT

APPEAL FROM THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BOISE

HONORABLE ROGER E. COCKERILLE, Magistrate Judge
HONORABLE PATRICK H. OWEN, District Judge

LAWRENCE G. WASDEN
Attorney General
State of Idaho

PAUL R. PANTHER
Deputy Attorney General
Chief, Criminal Law Division

JESSICA M. LORELLO
Deputy Attorney General
Criminal Law Division
P.O. Box 83720
Boise, Idaho 83720-0010
(208) 334-4534

ATTORNEYS FOR
PLAINTIFF-RESPONDENT

DAVID J. SMETHERS
Smethers Law
1000 S. Roosevelt
Boise, ID 83705
(208) 336-1145

ATTORNEY FOR
DEFENDANT-APPELLANT

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STATEMENT OF THE CASE

Nature Of The Case

Richard L. Beck appeals from the district court's intermediate appellate decision affirming the judgment entered upon Beck's conditional guilty plea to possession of paraphernalia. Beck asserts error in the denial of his motion to suppress.

Statement Of The Facts And Course Of The Proceedings

After receiving a report that an individual was smoking marijuana at Macks Creek Campground, Deputy Hyram Jones went to the campground along with Park Ranger Alex Urquhart. (Tr.[1], p.11, L.16 – p.13, L.9, p.41, L.14 – p.44, L.21.) At the campground, Deputy Jones and Ranger Urquhart went to Beck's campsite where they could see Beck and his girlfriend asleep inside their tent. (Tr., p.13, Ls.10-14.) Outside of Beck's tent, Deputy Hyram found a beer can "that was smashed, had some holes in it, had some burnt residue on there and what appeared to be a stem of marijuana."[2] (Tr.,p.13, Ls.15-19.) Deputy Hyram woke

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[1] Contemporaneous with this brief, the state filed a motion to augment the record with the complete transcript of the suppression hearing. The transcript provided to the Court and the state was incomplete as it only included every other page.

[2] Deputy Hyram drew a picture of the campsite and the location of Beck's tent and the paraphernalia, which was admitted as State's Exhibit 1 at the suppression hearing. (Tr., p.17, L.5 – p.19, L.15.) That exhibit is not, however, included in the record on appeal. (See R., p.79 (Certificate of Exhibits noting Exhibit 1 was not sent because it is "Too Large"). "This Court will not presume error on appeal, and an appellant bears the burden of demonstrating through the record." State v. Willoughby, 147 Idaho 482, 488, 211 P.3d 91, 97 (2009) (citation omitted). "When a party appealing an issue presents an incomplete record, this Court will presume that the absent portion supports the findings of the trial court." Id.

up Beck and his girlfriend and "began a conversation with Mr. Beck concerning what [he] had found and what [he] had been told." (Tr., p.14, Ls.7-12.) Beck originally denied knowledge of the paraphernalia, but later admitted he smoked marijuana using the beer can, confessing that he used the can to "wake and bake," which means "you wake up and get stoned." (Tr., p.14, Ls.15-18, p.17, Ls.2-4, p.49, L.24 – p.51, L.9.)

The state charged Beck with possession of drug paraphernalia. (R., pp.8-9.) Beck filed a motion to suppress the paraphernalia and his statements. (R., p.20.) Specifically, Beck argued the search was unlawful because it occurred within the "curtilage" of his tent and was conducted without a warrant and that his statements should be suppressed because Deputy Hyram did not provide Miranda[3] warnings before questioning him about the paraphernalia. (R., p.20; Tr., p.69, L.25 – p.73, L.9.) The court denied Beck's motion after which Beck entered a conditional guilty plea, reserving the right to appeal the court's suppression decision. (R., pp.40-42, 45-46.) The court entered judgment and Beck filed a timely notice of appeal in district court. (R., pp.40, 47-48.) The district court affirmed. (R., pp.69-74.)

Beck timely appeals to this Court. (R., pp.75-77.)

[3] Miranda v. Arizona, 384 U.S. 436 (1966).

ISSUES

Beck states the issues on appeal as:

1. Were the [sic] Beck's 4th Amendment Rights violated by the warrantless entry into the cartilage of his camp site?

2. Were Beck's 5th and 6th Amendment Rights against self-incrimination violated by the unwarned and coercive questioning by law enforcement officers?

(Appellant's Brief in Support of Appeal ("Appellant's Brief"), p.3.)

The state rephrases the issue on appeal as:

Has Beck failed to show error in the district court's intermediate appellate decision affirming the magistrate's denial of Beck's motion to suppress?

ARGUMENT

Beck Has Failed To Establish The District Court Erred In Affirming The Magistrate's Denial Of His Suppression Motion

A. Introduction

Beck contends he was entitled to suppression, arguing there was a "warrantless entry into the curtilage of his camp site" and his statements were "unwarned" and in response to "coercive questioning." (Appellant's Brief, pp.3-11.) Both of Beck's arguments fail. Application of the correct legal standards to the facts shows that, contrary to Beck's claims, neither a warrant nor Miranda warnings were required.

B. Standard Of Review

On review of a decision rendered by a district court in its intermediate appellate capacity, the reviewing court "directly review[s] the district court's decision." State v. DeWitt, 145 Idaho 709, 711, 184 P.3d 215, 217 (Ct. App. 2008) (citing Losser v. Bradstreet, 145 Idaho 670, 183 P.3d 758 (2008)). The appellate court "examine[s] the magistrate record to determine whether there is substantial and competent evidence to support the magistrate's findings of fact and whether the magistrate's conclusions of law follow from those findings." Id. "If those findings are so supported and the conclusions follow therefrom and if the district court affirmed the magistrate's decision, [the appellate court] affirm[s] the district court's decision as a matter of procedure." Id. (citing Losser, 145 Idaho 670, 183 P.3d 758; Nicholls v. Blaser, 102 Idaho 559, 633 P.2d 1137 (1981)).

The standard of review of a suppression motion is bifurcated. When a decision on a motion to suppress is challenged, the appellate court accepts the trial court's findings of fact that are supported by substantial evidence, but freely reviews the application of constitutional principles to those facts. State v. Diaz, 144 Idaho 300, 302, 160 P.3d 739, 741 (2007).

C. The District Court Correctly Affirmed The Magistrate's Decision Denying Beck's Suppression Motion

1. Beck Did Not Have A Legitimate Expectation Of Privacy In The Public Land Surrounding His Tent

"A person challenging a search has the burden of showing that he or she had a legitimate expectation of privacy in the item or place searched." State v. Pruss, 145 Idaho 623, 626, 181 P.3d 1231, 1234 (2008) (citations omitted). Whether such an expectation exists requires a court to determine (1) whether the individual had a "subjective expectation of privacy in the object of the challenged search," and (2) whether "society is willing to recognize that expectation as reasonable." Id. The first inquiry is a question of fact, and the second is a question of law. Id.

Both the magistrate and district court correctly concluded that the Idaho Supreme Court's opinion in Pruss, supra, is dispositive of Beck's claim that he had a reasonable expectation of privacy in the "curtilage" of his tent. In Pruss, officers entered the defendant's "hooch," which was on public land, to investigate criminal activity in the area. 145 Idaho at 624-625, 181 P.3d at 1232-1233. As part of their investigation, officers searched the hooch without a warrant. Id. at 625, 181 P.3d at 1233. "Pruss moved to suppress the items obtained from the

search of the hooch on the ground that the warrantless search and seizure violated the Constitutions of the United States of America and the State of Idaho." Id. The district court granted the motion and the state appealed. Id.

On appeal, the Idaho Supreme Court rejected the state's argument that Pruss had no Fourth Amendment interest in the hooch, holding that "a person using a temporary shelter on public lands as his or her living quarters has a reasonable expectation of privacy in that shelter and that the government may not intrude into the shelter without a search warrant, absent an exception to the warrant requirement." Pruss, 145 Idaho at 626, 181 P.3d at 1235 (footnote omitted). The Court, however, agreed "that Pruss did not have a reasonable expectation of privacy in the forest land surrounding his campsite." Id. at 628, 181 P.3d at 1236. Similarly, Beck had no reasonable expectation of privacy in the public land surrounding his tent.

Although Beck does not cite, much less distinguish, Pruss despite the lower courts' reliance on it, he apparently seeks to avoid the Court's statement in Pruss that an individual has no reasonable expectation of privacy "in the forest land surrounding [a] campsite," by claiming his tent has curtilage, which, like his tent, is protected by the Fourth Amendment. (Appellant's Brief, pp.3-8.) The flaw in Beck's argument is that he cannot claim a privacy interest in something he does not own. Although Beck refers to the campsite as his "property," it clearly is not. (Appellant's Brief, p.6.) Macks Creek Campground is public land subject to the authority of Lucky Peak Lake maintenance staff and park rangers with the Army Corps of Engineers. (See Tr., p.31, L.5 – p.33, L.10, p.38, L.17 – p.39, L.3,

p.41, Ls.24-25, p.43, Ls.6-7, p.44, Ls.23-24.) It is not Beck's "property" and he has no privacy interest in it and he does not acquire a privacy interest in it simply by labeling it curtilage. See, e.g., United States v. Basher, 629 F.3d 1161, 1169 (9th Cir. 2011) (recognizing an expectation of privacy in a tent but holding there is no expectation of privacy in the campsite and stating the area outside the tent is not cartilage). The magistrate and district court correctly rejected Beck's claimed privacy interest in the land surrounding his tent.

Beck has failed to show error in the denial of his motion to suppress the paraphernalia found on the public land outside his tent.

2. Beck Was Not Entitled To *Miranda* Warnings Prior To Being Questioned About The Paraphernalia Outside His Tent

An individual is not entitled to Miranda warnings unless he is subject to custodial interrogation. State v. Silver, 155 Idaho 29, ___, 304 P.3d 304, 306 (Ct. App. 2013) (citing Miranda, 384 U.S. at 467-468). The test for determining if someone is in custody for purposes of Miranda is whether objective consideration of the totality of the circumstances shows there was a restraint on freedom of movement of the degree associated with a formal arrest. California v. Beheler, 463 U.S. 1121, 1125 (1983). "The relevant inquiry is how a reasonable person in the suspect's position would have understood the situation." Silver, 155 Idaho at ___, 304 P.3d at 307 (citations omitted). "The first step is to determine whether an individual's freedom of movement was curtailed." Id. This inquiry, however, is "only a necessary and not a sufficient condition for *Miranda* custody." Id. Investigative detentions pursuant to Terry v. Ohio, 392 U.S. 1

(1968), "do not implicate *Miranda* even though the detained persons are not free to leave during the stop." Silver, 155 Idaho at ___, 304 P.3d at 307 (citing Berkemer v. McCarty, 468 U.S. 420, 440 (1984)).

With respect to the interrogation component of Miranda, the court considers whether the circumstances surrounding the questioning "created a police-dominated atmosphere, and whether the circumstances involve the type of inherently compelling pressures that are often present when a suspect is yanked from familiar surroundings in the outside world and subjected to interrogation in a police station." Silver, 155 Idaho at ___, 304 P.3d at 307 (quotations and citations omitted).

> Specific factors to be considered may include the degree of restraint on the person's freedom of movement including whether the subject is informed that the detention is more than temporary, the location and visibility of the interrogation, whether other persons were present, the number of questions asked, the duration of the interrogation or detention, the time of the interrogation, the number of officers present, the number of officers involved in the interrogation, the conduct of the officers, and the nature and manner of the questioning.

Silver, 155 Idaho at ___, 304 P.3d at 307 (citations omitted). It was Beck's burden to show he was in custody for purposes of Miranda.[4] Id.

In rejecting Beck's Miranda claim, the magistrate found Beck's detention was a Terry stop and that a "reasonable person in Mr. Beck's place would not believe that he was in custody." (Tr.,p.76, Ls.18-24.) The district court agreed,

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[4] Although it was Beck's burden to show both a privacy interest and custody, Beck argued the burden was on the state to show an exception to the warrant requirement, and the court "err[ed] on the side of having the State proceed first" because there was "no warrant" and "the constitution says no search shall occur upon no probable cause." (Tr., p.1, L.7 – p.6, L.12.)

concluding the magistrate's determination was "supported by substantial evidence." (R., p.73.) Beck argues otherwise, asserting he was "in custody from a reasonable person's standpoint" because Deputy Hyram "instructed Beck's girlfriend to wake him up, ordered Beck to sit in a lawn chair for reasons of officer safety, and did not tell Beck he was free to leave." (Appellant's Brief, p.8.) Further, "Beck argues that the Magistrate and the District Judge ignored [his] affidavit" and claims his "affidavit standing alone is sufficient to establish custody status" and that "being confronted with the can and questioned about prior pot use" constituted interrogation requiring Miranda warnings. (Appellant's Brief, pp.9, 10.) Beck is incorrect.

First, as to Beck's affidavit, the affidavit was not admitted as evidence at the hearing. Rather, Beck testified that he executed an affidavit and that everything in his affidavit was true. (Tr., p.64, Ls.7-13.) He never testified to its contents or to any facts relevant to any of the issues presented in relation to his request for suppression. Thus, even if the magistrate or district court "ignored" Beck's affidavit, the failure to consider something that was not evidence would not be erroneous. That said, nothing in Beck's affidavit proves Beck was in custody for purposes of Miranda. Beck's affidavit states, in relevant part, that he was "awakened by two law enforcement officers while sleeping in [his] tent which was located within the curtilage of [his] camp site," the officer "was in uniform, wore a badge, and was armed," he was not "presented with any type of warrant," was "confronted" with and questioned about the paraphernalia without first being read Miranda warnings, and "did not feel free to ignore the officer's presence or

questioning." (R., pp.22-23.) As to the last point, it is irrelevant how Beck felt since the test is an objective one based on a reasonable person standard. With respect to the remaining points in Beck's affidavit, even if considered, they do not demonstrate a Miranda violation.

Beck was the subject of an investigative detention in front of his "home" (Appellant's Brief, p.8), as opposed to a police station, and that detention was based on reasonable articulable suspicion that Beck possessed paraphernalia. Deputy Hyram's questioning was in a public place, in the presence of Beck's girlfriend, and there is no evidence that his questions were inappropriate or coercive or that he, or Ranger Urquhart, used forced or engaged in misconduct. And, notwithstanding Beck's suggestion to the contrary (Appellant's Brief, p.8), Deputy Hyram was not required to advise him he was "free to leave" in order for the court to find he was not in custody. See, e.g., State v. Hamlin, 2014 WL 1687137 **5-6 (Ct. App. 2014). Beck has failed to meet his burden of showing otherwise and has therefore failed to show the district court erred in affirming the magistrate's denial of his suppression motion.

CONCLUSION

The state respectfully requests that this Court affirm the district court's intermediate appellate decision affirming the magistrate's order denying Beck's motion to suppress.

DATED this 8th day of May, 2014.

JESSICA M. LORELLO
Deputy Attorney General

CERTIFICATE OF MAILING

I HEREBY CERTIFY that I have this 8th day of May, 2014, served two true and correct copies of the attached RESPONDENT'S BRIEF by placing the copies in the United States mail, postage prepaid, addressed to:

DAVID J. SMETHERS
Smethers Law
1000 S. Roosevelt St.
Boise, ID 83705

JESSICA M. LORELLO
Deputy Attorney General

JML/pm